

AMENDED IN ASSEMBLY MAY 5, 1998
AMENDED IN ASSEMBLY MARCH 23, 1998

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 1810

Introduced by Assembly Member Davis

February 10, 1998

An act to amend Section 17510.2 of, and to repeal Section 17510.87 of, the Business and Professions Code, and to amend Sections 12580, 12581, 12587, and 12599 of, and to add Sections 12581.2, 12599.1, and 12599.2 to, the Government Code, relating to charitable fundraising.

LEGISLATIVE COUNSEL'S DIGEST

AB 1810, as amended, Davis. Charitable fundraising.

Under existing law, the Uniform Supervision of Trustees for Charitable Purposes Act governs charitable corporations and trustees who hold or solicit property for charitable purposes over which the Attorney General has enforcement and supervisory powers.

The act also requires a commercial fundraiser to register with the Attorney General's Registry of Charitable Trusts and with the sheriff of each county in which the fundraiser intends to solicit funds or the sheriff's designee prior to soliciting any funds or receiving or controlling any funds or assets for charitable purposes, and to file an annual financial report of funds solicited on behalf of each tax-exempt organization or for each charitable purpose.

Under the act, the Attorney General is also authorized to make any additional rules and regulations that may be necessary for the administration of the act, and the act, among other things, prohibits any individual, corporation, or other legal entity who, for compensation, solicits funds or other property for charitable purposes from retaining more than 50% of the net proceeds collected as a fee for fundraising services.

The bill would rename the act, expand the definitions of solicitation for charitable purposes, sales solicitation for charitable purposes, and commercial fundraiser for charitable purposes, and apply the act's provisions to commercial fundraisers, fundraising counsels, and commercial coventurers. The bill would also require a commercial fundraiser to register with the Attorney General prior to soliciting, receiving, or controlling any assets or property, including salvageable personal property, for charitable purposes, in addition to funds, and to include these assets or property in its annual financial report. The bill would delete both the requirement that the commercial fundraiser also file with the sheriff and the prohibition against retaining more than 50% of the net proceeds collected as a fee for fundraising services.

The bill would authorize the Attorney General to assess a filing fee to offset the actual costs of operating and maintaining the Attorney General's Registry of Charitable Trusts and to provide public access via the Internet to reports filed with the Attorney General.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 17510.2 of the Business and
2 Professions Code is amended to read:
3 17510.2. (a) As used in this article, "solicitation for
4 charitable purposes," means any request, plea, entreaty,
5 demand, or invitation, or attempt thereof, to give money
6 or property, in connection with which any of the
7 following applies:



1 (1) Any appeal is made for charitable purposes.

2 (2) The name of any charity, philanthropic or
3 charitable organization is used or referred to in any such
4 appeal as an inducement for making any such gift.

5 (3) Any statement is made to the effect that the gift or
6 any part thereof will go to or be used for any charitable
7 purpose or organization.

8 (4) The name of any organization of law enforcement
9 personnel, firefighters, or other persons who protect the
10 public safety is used or referred to as an inducement for
11 transferring any money or property, unless the only
12 expressed or implied purpose of the solicitation is for the
13 sole benefit of the actual active membership of the
14 organization.

15 (b) As used in this article, “sales solicitation for
16 charitable purposes” means the sale of, offer to sell, or
17 attempt to sell any advertisement, advertising space,
18 book, card, chance, coupon device, magazine
19 subscription, membership, merchandise, ticket of
20 admission or any other thing or service in connection with
21 which any of the following applies:

22 (1) Any appeal is made for charitable purposes.

23 (2) The name of any charity, philanthropic or
24 charitable organization is used or referred to in any such
25 appeal as an inducement for making any such sale.

26 (3) Any statement is made to the effect that the whole
27 or any part of the proceeds from the sale will go to or be
28 used for any charitable purpose or organization.

29 (4) The name of any organization of law enforcement
30 personnel, firefighters, or other persons who protect the
31 public safety is used or referred to as an inducement for
32 transferring any money or property, unless the only
33 expressed or implied purpose of the sales solicitation is for
34 the sole benefit of the actual active membership of the
35 organization.

36 (c) A solicitation for charitable purposes, or a sale,
37 offer or attempt to sell for charitable purposes, shall
38 include the making or disseminating or causing to be
39 made or disseminated before the public in this state, in
40 any newspaper or other publication, or any advertising

1 device, or by public outcry or proclamation, or in any
2 other manner or means whatsoever any such solicitation.

3 (d) For purposes of this article, “charity” shall include
4 any person who, or any nonprofit community
5 organization, fraternal, benevolent, educational,
6 philanthropic, or service organization, or governmental
7 employee organization which, solicits or obtains
8 contributions solicited from the public for charitable
9 purposes or holds any assets for charitable purposes.

10 SEC. 2. Section 17510.87 of the Business and
11 Professions Code is repealed.

12 SEC. 3. Section 12580 of the Government Code is
13 amended to read:

14 12580. This article may be cited as the Supervision of
15 Trustees and Fundraisers for Charitable Purposes Act.

16 SEC. 4. Section 12581 of the Government Code is
17 amended to read:

18 12581. This article applies to all charitable
19 corporations and trustees holding property for charitable
20 purposes, commercial fundraisers for charitable
21 purposes, fundraising counsel for charitable purposes,
22 and commercial coventurers, over which the state or the
23 Attorney General has enforcement or supervisory
24 powers. The provisions of this article shall not apply to any
25 committee as defined in Section 82013 which is required
26 to and does file any statement pursuant to the provisions
27 of Article 2 (commencing with Section 84200) of Chapter
28 4 of Title 9.

29 SEC. 5. Section 12581.2 is added to the Government
30 Code, to read:

31 12581.2. As used in this article, “solicitation” or
32 “soliciting” for charitable purposes means any request,
33 plea, entreaty, demand, or invitation, or attempt thereof,
34 to give money or property, in connection with which any
35 of the following applies:

36 ~~(1)–~~

37 (a) Any appeal is made for charitable purposes.

38 ~~(2)–~~

1 (b) The name of any charity, philanthropic or
2 charitable organization, is used or referred to in any such
3 appeal as an inducement for making any such gift.

4 ~~(3)~~

5 (c) Any statement is made to the effect that the gift or
6 any part thereof will go to or be used for any charitable
7 purpose or organization.

8 ~~(4)~~

9 (d) The name of any organization of law enforcement
10 personnel, firefighters or other ~~person~~ *persons* who
11 protect the public safety is used or referred to as an
12 inducement for transferring any money or property,
13 unless the only expressed or implied purpose of the
14 solicitation is for the sole benefit of the actual active
15 membership of the organization.

16 SEC. 6. Section 12587 of the Government Code is
17 amended to read:

18 12587. The Attorney General may make additional
19 rules and regulations necessary for the administration of
20 this article, provided that any assessment of filing fees
21 from charitable trustees and corporations, commercial
22 fundraisers, fundraising counsel, and commercial
23 coventures subject to this article shall be used by the
24 Department of Justice to fully offset but not exceed the
25 actual costs of operating and maintaining the Attorney
26 General's Registry of Charitable Trusts and providing
27 public access via the Internet to reports filed with the
28 Attorney General.

29 SEC. 7. Section 12599 of the Government Code is
30 amended to read:

31 12599. (a) "Commercial fundraiser for charitable
32 purposes" is defined as any individual, corporation, or
33 other legal entity who for compensation does any of the
34 following:

35 (1) Solicits funds, assets, or property in this state for
36 charitable purposes.

37 (2) As a result of a solicitation of funds, assets, or
38 property in this state for charitable purposes, receives or
39 controls the funds, assets, or property solicited for
40 charitable purposes.

1 (3) Employs, procures, or engages any compensated
2 person to solicit, receive, or control funds, assets, or
3 property for charitable purposes.

4 A commercial fundraiser for charitable purposes shall
5 include any person, association of persons, corporation, or
6 other entity that obtains a majority of its inventory for sale
7 by the purchase, receipt, or control for resale to the
8 general public, of salvageable personal property solicited
9 by an organization qualified to solicit donations pursuant
10 to Section 148.3 of the Welfare and Institutions Code.

11 A commercial fundraiser for charitable purposes shall
12 not include a “trustee” as defined in Section 12582 or
13 12583, a “charitable corporation” as defined in Section
14 12582.1, or any employee thereof. A commercial
15 fundraiser for charitable purposes shall not include an
16 individual who is employed by or under the control of a
17 commercial fundraiser for charitable purposes registered
18 with the Attorney General. A commercial fundraiser for
19 charitable purposes shall not include any federally
20 insured financial institution which holds as a depository
21 funds received as a result of a solicitation for charitable
22 purposes.

23 As used in this section, “charitable purposes” includes
24 any solicitation in which the name of any organization of
25 law enforcement personnel, firefighters, or other persons
26 who protect the public safety is used or referred to as an
27 inducement for transferring any funds, assets, or
28 property, unless the only expressed or implied purpose of
29 the solicitation is for the sole benefit of the actual active
30 membership of the organization.

31 (b) A commercial fundraiser for charitable purposes
32 shall, prior to soliciting any funds, assets, or property,
33 including salvageable personal property, in California for
34 charitable purposes, or prior to receiving and controlling
35 any funds, assets, or property, including salvageable
36 personal property, as a result of a solicitation in this state
37 for charitable purposes, register with the Attorney
38 General’s Registry of Charitable Trusts on a registration
39 form provided by the Attorney General. Renewals of
40 registration shall be filed with the Registry of Charitable

1 Trusts by January 15 of each calendar year in which the
2 commercial fundraiser for charitable purposes does
3 business and shall be effective for one year. A registration
4 or renewal fee of two hundred dollars (\$200) shall be
5 required for registration of a commercial fundraiser for
6 charitable purposes, and shall be payable by certified or
7 cashier's check to the Attorney General's Registry of
8 Charitable Trusts at the time of registration or renewal.
9 The Attorney General may adjust the annual registration
10 or renewal fee as needed to ensure that revenues will
11 fully offset, but not exceed, the actual costs incurred by
12 the Department of Justice pursuant to this section. The
13 Attorney General's Registry of Charitable Trusts may
14 grant extensions of time to file annual registration as
15 required, pursuant to subdivision (b) of Section 12586.

16 (c) A commercial fundraiser for charitable purposes
17 shall file with the Attorney General's Registry of
18 Charitable Trusts an annual financial report on a form
19 provided by the Attorney General, accounting for all
20 funds collected pursuant to any solicitation for charitable
21 purposes during the preceding calendar year. The annual
22 financial report shall be filed with the Attorney General's
23 Registry of Charitable Trusts no later than 30 days after
24 the close of the preceding calendar year.

25 (d) The contents of the forms for annual registration
26 and annual financial reporting by commercial fundraisers
27 for charitable purposes shall be established by the
28 Attorney General in a manner consistent with the
29 procedures set forth in subdivisions (a) and (b) of Section
30 12586. The annual financial report shall require a
31 detailed, itemized accounting of funds, assets, or
32 property, solicited for charitable purposes on behalf of
33 each charitable organization exempt from taxation under
34 Section 501(c)(3) of the Internal Revenue Code or for
35 each charitable purpose during the accounting period,
36 and shall include, among other data, the following
37 information for funds, assets, or property, solicited by the
38 commercial fundraiser for charitable purposes:

39 (1) Total revenue.

1 (2) The fee or commission charged by the commercial
2 fundraiser for charitable purposes.

3 (3) Salaries paid by the commercial fundraiser for
4 charitable purposes to its officers and employees.

5 (4) Fundraising expenses.

6 (5) Distributions to the identified charitable
7 organization or purpose.

8 (6) The names and addresses of any director, officer,
9 or employee of the commercial fundraiser for charitable
10 purposes who is a director, officer, or employee of any
11 charitable organization listed in the annual financial
12 report.

13 (e) A commercial fundraiser for charitable purposes
14 that obtains a majority of its inventory for sale by the
15 purchase, receipt, or control for resale to the general
16 public, of salvageable personal property solicited by an
17 organization qualified to solicit donations pursuant to
18 Section 148.3 of the Welfare and Institutions Code shall
19 file with the Attorney General's Registry of Charitable
20 Trusts, and not with the sheriff of any county, an annual
21 financial report on a form provided by the Attorney
22 General that is separate and distinct from forms filed by
23 other commercial fundraisers for charitable purposes
24 pursuant to subdivisions (c) and (d).

25 (f) It shall be unlawful for any commercial fundraiser
26 for charitable purposes to solicit funds in this state for
27 charitable purposes unless the commercial fundraiser for
28 charitable purposes has complied with the registration or
29 annual renewal and financial reporting requirements of
30 this article. Failure to comply with these registration or
31 annual renewal and financial reporting requirements
32 shall be grounds for injunction against solicitation in this
33 state for charitable purposes and other civil remedies
34 provided by law.

35 (g) A commercial fundraiser for charitable purposes is
36 a constructive trustee for charitable purposes as to all
37 funds collected pursuant to solicitation for charitable
38 purposes and shall account to the Attorney General for all
39 funds. A commercial fundraiser for charitable purposes is
40 subject to the Attorney General's supervision and

1 enforcement over charitable funds and assets to the same
2 extent as a trustee for charitable purposes under this
3 article.

4 (h) It shall be unlawful for a commercial fundraiser for
5 charitable purposes to not disclose the percentage of total
6 fundraising expenses of the fundraiser upon receiving a
7 written or oral request from a person solicited for a
8 contribution for a charitable purpose. "Percentage of
9 total fundraising expenses," as used in this section, means
10 the ratio of the total expenses of the fundraiser to the total
11 revenue received by the fundraiser for the charitable
12 purpose for which funds are being solicited, as reported
13 on the most recent financial report filed with the
14 Attorney General's Registry of Charitable Trusts. A
15 commercial fundraiser shall disclose this information in
16 writing within five working days from receipt of a request
17 by mail or fax. A commercial fundraiser shall orally
18 disclose this information immediately upon a request
19 made in person or in a telephone conversation and shall
20 follow this response with a written disclosure within five
21 working days. Failure to comply with the requirements
22 of this subdivision shall be grounds for an injunction
23 against solicitation in this state for charitable purposes
24 and other civil remedies provided by law.

25 (i) If the Attorney General issues a report to the public
26 containing information obtained from registration forms
27 or financial report forms filed by commercial fundraisers
28 for charitable purposes, there shall be a separate section
29 concerning commercial fundraisers for charitable
30 purposes that obtain a majority of their inventory for sale
31 by the purchase, receipt, or control for resale to the
32 general public, of salvageable personal property solicited
33 by an organization qualified to solicit donations pursuant
34 to Section 148.3 of the Welfare and Institutions Code. The
35 report shall include an explanation of the distinctions
36 between these thrift store operations and other types of
37 commercial fundraising.

38 (j) If any provision of this section or the application
39 thereof to any person or circumstances is held invalid,
40 that invalidity shall not affect other provisions or

1 application of this section which can be given effect
2 without the invalid provision or application, and to this
3 end the provisions of this section are severable.

4 SEC. 8. Section 12599.1 is added to the Government
5 Code, to read:

6 12599.1. (a) “Fundraising counsel for charitable
7 purposes” is defined as any person who is described by all
8 of the following:

9 (1) For compensation plans, manages, advises,
10 counsels, consults, or prepares material for, or with
11 respect to, the solicitation in this state of funds, assets or
12 property for charitable purposes.

13 (2) Does not solicit funds, assets, or property for
14 charitable purposes.

15 (3) Does not receive or control funds, assets, or
16 property solicited for charitable purposes in this state.

17 (4) Does not employ, procure, or engage any
18 compensated person to solicit, receive, or control funds,
19 assets, or property for charitable purposes.

20 (b) “Fundraising counsel for charitable purposes”
21 does not include any of the following:

22 (1) An attorney, investment counselor, or banker who
23 in the conduct of that person’s profession advises a client
24 when actually engaged in the giving of legal, investment,
25 or financial advice.

26 (2) A trustee as defined in Section 12582 or 12583.

27 (3) A charitable corporation as defined in Section
28 12582.1, or any employee thereof.

29 (4) A person employed by or under the control of a
30 fundraising counsel for charitable purposes, as defined in
31 subdivision (a).

32 (5) A person, corporation, or other legal entity,
33 engaged as an independent contractor directly by a
34 trustee or a charitable corporation, that prints,
35 reproduces, or distributes written materials prepared by
36 a trustee, a charitable corporation, or any employee
37 thereof, or that performs artistic or graphic services with
38 respect to written materials prepared by a trustee, a
39 charitable corporation, or any employee thereof.

1 (6) A person whose total annual compensation for
2 performing any activity described in paragraph (1) of
3 subdivision (a) does not exceed one thousand dollars
4 (\$1,000).

5 (c) A fundraising counsel for charitable purposes shall,
6 prior to managing, advising, counseling, consulting, or
7 preparing material for, or with respect to, the solicitation
8 in this state of funds, assets, or property for charitable
9 purposes, register with the Attorney General's Registry of
10 Charitable Trusts on a registration form provided by the
11 Attorney General. Renewals of registration shall be filed
12 with the Registry of Charitable Trusts by January 15 of
13 each calendar year in which the fundraising counsel for
14 charitable purposes does business and shall be effective
15 for one year.

16 A registration or renewal fee of two hundred dollars
17 (\$200) shall be required for registration of a fundraising
18 counsel for charitable purposes, and shall be payable by
19 certified or cashier's check to the Attorney General's
20 Registry of Charitable Trusts at the time of registration
21 and renewal. The Attorney General may adjust the
22 annual registration or renewal fee as needed to ensure
23 that revenues will fully offset, but not exceed, the actual
24 costs incurred by the Department of Justice pursuant to
25 this section. The Attorney General's Registry of
26 Charitable Trusts may grant extensions of time to file
27 annual registration as required, pursuant to subdivision
28 (b) of Section 12586.

29 (d) A fundraising counsel for charitable purposes shall
30 file annually with the Attorney General's Registry of
31 Charitable Trusts on a form provided by the Attorney
32 General, a report listing each person, corporation, or
33 other legal entity for whom the fundraising counsel has
34 performed any services described in paragraph (1) of
35 subdivision (a), and a statement certifying that the
36 fundraising counsel had a written contract with each
37 listed person, corporation, or other legal entity that
38 contained the following provisions:

39 (1) The legal name and address of the person,
40 corporation, or other legal entity as registered with the

1 Attorney General pursuant to this article, or if the person,
2 corporation, or other legal entity is not registered with
3 the Attorney General, the legal name and address of the
4 person, corporation, or other legal entity as registered
5 with the Secretary of State.

6 (2) A statement of the respective obligations of the
7 fundraising counsel and the person, corporation, or other
8 legal entity.

9 (3) A clear statement of the fees that will be paid to the
10 fundraising counsel.

11 (4) The effective and termination dates of the contract
12 and the date services will commence with respect to
13 solicitation in this state of funds, assets, or property for
14 charitable purposes.

15 (5) A statement that the person, corporation, or other
16 legal entity exercises control and approval over the
17 content and volume or any solicitation for charitable
18 purposes.

19 (6) A statement that the fundraising counsel will not
20 at any time solicit funds, assets, or property for charitable
21 purposes, receive or control funds, assets, or property
22 solicited for charitable purposes, or employ, procure, or
23 engage any compensated person to solicit, receive, or
24 control funds, assets, or property for charitable purposes.

25 (7) The signature of two authorized officers or
26 directors of the person, corporation, or other legal entity
27 and the signature of the authorized contracting officer of
28 the fundraising counsel.

29 (e) It shall be unlawful for any fundraising counsel for
30 charitable purposes to manage, advise, counsel, consult,
31 or prepare material for, or with respect to, the solicitation
32 in this state of funds, assets, or property for charitable
33 purposes unless the fundraising counsel for charitable
34 purposes has complied with the registration or annual
35 renewal and financial reporting requirements of this
36 article.

37 (f) A fundraising counsel for charitable purposes is
38 subject to the Attorney General's supervision and
39 enforcement to the same extent as a trustee for charitable
40 purposes under this article.

(g) If any provision of this section or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or application of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

SEC. 9. Section 12599.2 is added to the Government Code, to read:

12599.2. (a) "Commercial coventurer" is defined as any person who, for profit, is regularly and primarily engaged in trade or commerce other than in connection with the raising of funds, assets, or property for charitable organizations or charitable purposes, and who represents to the public that the purchase or use of any goods, services, entertainment, or any other thing of value will benefit a charitable organization or will be used for a charitable purpose.

(b) A commercial coventurer is a trustee as defined in Section 12582. Notwithstanding the requirements of Sections 12585 and 12586, a commercial coventurer is not required to register or file periodic reports with the Attorney General provided that the commercial coventurer:

(1) Has a written contract with a trustee or charitable corporation subject to this article, signed by two officers of the trustee or charitable corporation, prior to representing to the public that the purchase or use of any goods, services, entertainment, or any other thing of value will benefit the trustee or charitable corporation or will be used for a charitable purpose.

(2) Within 90 days after commencement of those representations, and at the end of each successive 90-day period during which the representations are made, transfers to that trustee or charitable corporation subject to this article all funds, assets, or property received as a result of the representations.

(3) Provides in conjunction with each transfer required by paragraph (2) a written accounting to the trustee or charitable corporation subject to this article of all funds, assets, or property received sufficient to enable

1 the trustee or charitable corporation (A) to determine
2 that representations made to the public on its behalf have
3 been adhered to accurately and completely, and (B) to
4 prepare its periodic report filed with the Attorney
5 General pursuant to Section 12586.

6 (c) A commercial coventurer that does not meet the
7 requirements of paragraphs (1), (2), and (3) of
8 subdivision (b) shall register and report to the Attorney
9 General on forms required by the Attorney General. An
10 annual registration or renewal fee of two hundred dollars
11 (\$200) shall be required for registration or renewal of
12 registration of a commercial coventurer, and shall be
13 payable by certified or cashier's check to the Attorney
14 General's Registry of Charitable Trusts at the time of
15 registration or renewal. The Attorney General may adjust
16 the annual registration or renewal fee as needed to
17 ensure that revenues will fully offset, but not exceed, the
18 actual costs incurred by the Department of Justice
19 pursuant to this section.

